

Arnold Richer, #2751
Patrick F. Holden, #6247
RICHER & OVERHOLT, P.C.
Attorneys for Defendant World Botanical Gardens, Inc.
901 West Baxter Drive
South Jordan, Utah 84095
Telephone: (801) 561-4750
Email: aricher@richerandoverholt.com

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

WALTER L. WAGNER, an individual,	:	
Plaintiff,	:	Case No. 2:11-cv-784-CW-PMW
v.	:	DEFENDANT WORLD
	:	BOTANICAL GARDENS, INC.'S
PRESTON MICHIE, an individual, KENNETH	:	MOTION TO STAY.
FRANCIK, an individual, LESLIE COBOS, an	:	
individual, MARK ROBINSON, an individual,	:	
ANNETE EMERSON, an individual, STEVE	:	
BRYANT, an individual, and WORLD	:	District Judge Clark Waddoups
BOTANICAL GARDENS, INC., a Nevada	:	
corporation,	:	Magistrate Judge Paul M. Warner
Defendants.	:	

Defendant World Botanical Gardens, Inc, a Nevada corporation ("Defendant WBGI"), by and through its attorneys of record Arnold Richer and Patrick F. Holden of RICHER & OVERHOLT, P.C., and pursuant to the *Federal Rules of Civil Procedure* (hereinafter "Rule" or

“Rules”) 12(b)(1), 12(b)(6) and DUCivR 7-1, submits Defendants World Botanical Gardens, Inc.’s Motion to Stay.

This Court issued a *Report and Recommendation* on March 5, 2012 addressing Defendant WBGI’s arguments that Plaintiff’s claims are barred under the doctrine of issue preclusion. The Court considered the preclusive effects of three state court decisions and found each element of issue preclusion satisfied, except the finality of the aforementioned state court decisions.

In the *Report and Recommendation*, the Court concluded that the issues raised by Plaintiff in the state court cases are the same issues raised in Plaintiff’s Complaint in this case. The Court further found that the issues had been fully and fairly litigated and that Plaintiff was a party to the state court proceedings. The Court declined to rule on the finality of the three state court judgments due to a lack of evidence in the record.

Defendant WBGI has filed a second motion to dismiss with respect to claims related to the Nevada Decision and the Second Hawaii Decision. As indicated in Defendant WBGI’s Memorandum submitted concurrently herewith, the First Hawaii Decision is not yet final. The Hawaii Court of Appeals has remanded the case back to the trial court for further proceedings. See Exhibit B to Defendant WBGI’s Memorandum in Support of Second Motion to Dismiss.

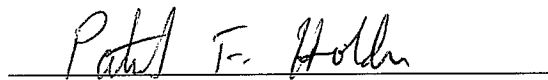
The First Hawaii Decision involves the same issues Plaintiff raises in the instant case. In furtherance of judicial economy, Defendant WBGI requests that the Court issue a stay in this case temporarily halting further proceedings on this case until the Second Hawaii Decision has

been resolved.

Defendant WBGI's Second Motion to Dismiss is accompanied by Defendant WBGI's Memorandum in Support of Defendant WBGI's Second Motion to Dismiss submitted concurrently herewith.

DATED this 4th day of April, 2012.

RICHER & OVERHOLT, P.C.

A handwritten signature in cursive script, reading "Patrick F. Holden", is written over a horizontal line.

Arnold Richer

Patrick F. Holden

Attorneys for Defendant World Botanical Gardens, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **DEFENDANT WORLD BOTANICAL GARDENS, INC.'S MOTION TO STAY** to be delivered to the following in the manner and on the date below indicated:

☒ Mail
☐ Fax
☒ Email
☐ Hand Delivery

Walter L. Wagner
532 N 700 E
Payson, Utah 84651
retlawdad@hotmail.com
(Pro Se Plaintiff)

DATED this 4th day of April, 2012.

Pat F. Alder